

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ben Gilmore	Team: Squad #15	CCRB Case #: 201701615	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 02/27/2017 9:30 AM	Location of Incident: § 87(2)(b) § 87(2)(b)	Precinct: 81	18 Mo. SOL 8/27/2018	EO SOL 8/27/2018	
Date/Time CV Reported Thu, 03/02/2017 10:22 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 03/02/2017 10:22 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Thomas Napolitano	3282	940682	WARRSEC
2. SGT Raymond Tomins	05336	902480	WARRSEC
3. DT3 Joseph Russo	4054	939390	WARRSEC
4. DT3 Eric Ortiz	5503	942297	WARRSEC
5. An officer			WARRSEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Eric Meza	05566	925744	WARRSEC
2. DT3 Anthony Giretti	4617	938568	WARRSEC
3. DT3 Paul Viar	2928	923317	WARRSEC
4. POM John Ross	02868	949580	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Thomas Napolitano	Force: Detective Thomas Napolitano pointed his gun at § 87(2)(b)	§ 87(2)(b)
B.SGT Raymond Tomins	Force: Sergeant Raymond Tomins pointed his gun at § 87(2)(b)	§ 87(2)(b)
C.DT3 Eric Ortiz	Force: Detective Eric Ortiz pointed his gun at § 87(2)(b)	§ 87(2)(b)
D.DT3 Joseph Russo	Force: Detective Joseph Russo pointed his gun at § 87(2)(b)	§ 87(2)(b)
E.DT3 Thomas Napolitano	Abuse: Detective Thomas Napolitano entered and searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
F.SGT Raymond Tomins	Abuse: Sergeant Raymond Tomins entered and searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
G. An officer	Force: An officer used physical force against § 87(2)(b)	§ 87(2)(b)

Case Summary

On March 2, 2017, § 87(2)(b) called the CCRB and filed this complaint on his own behalf.

On February 27, 2017, at approximately 8:50 a.m., eight officers from the Patrol Borough Brooklyn North Warrant Squad—Sgt. Raymond Tomins, Det. Thomas Napolitano, Det. Eric Meza, Det. Joseph Russo, Det. Anthony Giretti, Det. Paul Viar, PO John Ross, and Det. Eric Ortiz—arrived outside of § 87(2)(b) in Brooklyn.

It is undisputed that the sole reason the officers arrived at this location was to attempt to apprehend § 87(2)(b) who had an active New York State parole warrant. Det. Napolitano was the only officer who investigated the parole warrant. Det. Napolitano testified that his investigation led him to conclude that § 87(2)(b) resided at § 87(2)(b) § 87(2)(b) § 87(2)(b).

Four of the officers reportedly proceeded to § 87(2)(b) two officers went to the roof of the building, and two officers remained on the ground floor of the building. Det. Napolitano knocked on the door of § 87(2)(b).

§ 87(2)(b) was alone inside of § 87(2)(b) when Det. Napolitano knocked. § 87(2)(b) testified that he knew § 87(2)(b) from the time that § 87(2)(b) was a small child, but he denied that § 87(2)(b) had ever resided at, or been inside of, § 87(2)(b) § 87(2)(b) testified that when he heard knocking, he approached the front door of his apartment. § 87(2)(b) alleged that Det. Napolitano forced the peephole off of his front door (**Subsumed into Allegation E**). § 87(2)(b) opened the front door of his apartment. § 87(2)(b) § 87(2)(b) alleged that PO Napolitano, Sgt. Tomins, Det. Russo, and Det. Ortiz had their guns pointed at him (**Allegations A-D**).

Immediately after opening the door, § 87(2)(b) was escorted outside of his apartment. § 87(2)(b) alleged that Det. Napolitano, Sgt. Tomins, and other officers entered § 87(2)(b) and searched it (**Allegations E and F**). § 87(2)(b) alleged that as his apartment was being searched, one of the officers—§ 87(2)(g) § 87(2)(g) pressed his forearm on the back of § 87(2)(b)'s neck, pinning him against a wall (**Allegation G**).

The search of § 87(2)(b) yielded negative results for § 87(2)(b) or any other person. Det. Napolitano then spoke with § 87(2)(b) indicated that § 87(2)(b) § 87(2)(b) might be in § 87(2)(b) of the same building. Det. Napolitano and the other officers proceeded to § 87(2)(b) and § 87(2)(b) § 87(2)(b) was apprehended inside of § 87(2)(b) § 87(2)(b) was not arrested or issued a summons as a result of this incident. Video footage from surveillance cameras at § 87(2)(b) in Brooklyn captures immaterial portions of the incident. The original footage may be found in IA #27, and SnagIt copies may be found in IAs #40-42. Video footage from § 87(2)(b)'s tablet device captures the condition of his apartment after the incident, but it does not capture the incident itself. This video footage may be found in IA #43.

This case surpassed the 90-day benchmark, because eight officers were interviewed.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation due to a concurrent IAB Group 42 investigation.
- A Notice of Claim inquiry was submitted with the Office of the New York City Comptroller on July 5, 2017 (Board Review 01). The results of the inquiry will be added to the case file upon receipt.

- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the second CCRB complaint filed by § 87(2)(b) (Board Review 03).
- Det. Napolitano has been a member of service for 11 years, and he has been the subject of 22 previous CCRB allegations, two of which were substantiated. In CCRB 201010420 a physical force allegation was substantiated against Det. Napolitano. The CCRB recommended charges, but he was found not guilty at departmental trial and no penalty was imposed. In CCRB 201609591 a premises entered and/or searched allegation was substantiated against Det. Napolitano. The CCRB recommended command level instructions, and the NYPD disposition remains unknown.
- Sgt. Tomins has been a member of service for 25 years, and he has been the subject of 25 previous CCRB allegations, two of which were substantiated. In CCRB 201603670, a premises entered and/or searched allegation was substantiated against Sgt. Tomins. The CCRB recommended charges, but Sgt. Tomins was found not guilty at departmental trial and received no penalty. In CCRB 201609591 a premises entered and/or searched allegation was substantiated against Sgt. Tomins. The CCRB recommended command level instructions, and the NYPD disposition remains unknown.
- Det. Russo has been a member of service for 11 years, and he has been the subject of 10 previous CCRB allegations, none of which were substantiated.
- Det. Ortiz has been a member of service for 10 years, and he has been the subject of 18 previous CCRB allegations, two of which were substantiated. In CCRB 201303865 a premises entered and/or searched allegation was substantiated against Det. Ortiz, and the CCRB recommended charges. Det. Ortiz was found guilty at departmental trial, and he was penalized eight vacation days. In CCRB 201412730 a premises entered and/or searched allegation was substantiated against Det. Ortiz. The CCRB recommended charges, and the NYPD disposition remains unknown.

Findings and Recommendations

Explanation of Subject Officer Identification

- It is undisputed that Det. Napolitano was the sole officer who investigated the parole warrant of § 87(2)(b) that Det. Napolitano determined that § 87(2)(b) § 87(2)(b) resided at § 87(2)(b) § 87(2)(b) and that he communicated this to the rest of the officers. It is further undisputed that Det. Napolitano was the lead officer in interacting with § 87(2)(b) at § 87(2)(b) on the day of the incident, and that Det. Napolitano eventually entered and searched § 87(2)(b) It is also undisputed that Sgt. Tomins assigned the parole warrant to Det. Napolitano, that he was the sole supervisor present for the entry and search of § 87(2)(b) and that Sgt. Tomins entered and searched § 87(2)(b) Allegations E and F are therefore pleaded against Det. Napolitano and Sgt. Tomins.
- § 87(2)(b) alleged that when he opened his apartment door, every officer outside his apartment was pointing a gun at him. The investigation determined that Det. Napolitano, Sgt. Tomins, Det. Russo, and Det. Ortiz were the sole officers standing

outside of § 87(2)(b)'s apartment when he opened the door. A gun pointed allegation was therefore pleaded against each of these officers, Allegations A-D.

- § 87(2)(b) alleged that an officer other than Det. Napolitano physically escorted him out of his apartment and pressed their forearm against the back of § 87(2)(b)'s neck, pinning him against a wall. No officer interviewed acknowledged that they or any officer did this. Moreover, Det. Napolitano testified that he was the officer who physically escorted § 87(2)(b) outside of his apartment, but § 87(2)(b) indicated that Det. Napolitano was not the officer who used physical force against him. Lacking additional evidence, the investigation was unable to determine who, if anyone, used physical force against § 87(2)(b). Allegation G is therefore pleaded against 'An officer.'

Allegations not pleaded

- A property damage allegation was not pleaded in regards to Det. Napolitano removing the peephole of § 87(2)(b)'s apartment. Although it is undisputed that Det. Napolitano removed the peephole of § 87(2)(b)'s apartment, Det. Napolitano merely unscrewed the peephole by hand, the peephole was not damaged as a result, and this action was done pursuant to the entry and search of the apartment. It is therefore subsumed into the entry and search allegation pleaded against Det. Napolitano, Allegation E.
- A property damage allegation was not pleaded in regards to § 87(2)(b)'s allegation that a stereo system in his apartment was damaged. § 87(2)(b) testified that after his apartment was searched, a stereo system that functioned before the search no longer functioned. However, § 87(2)(b) did not see who, if anyone, damaged the stereo system, nor did he know what about the stereo system was broken—he solely knew that it no longer functioned after the officers searched his apartment.

Allegation A – Force: Detective Thomas Napolitano pointed his gun at § 87(2)(b)

Allegation B – Force: Sergeant Raymond Tomins pointed his gun at § 87(2)(b)

Allegation C – Force: Detective Eric Ortiz pointed his gun at § 87(2)(b)

Allegation D – Force: Detective Joseph Russo pointed his gun at § 87(2)(b)

Allegation E – Abuse of Authority: Detective Thomas Napolitano entered and searched § 87(2)(b) in Brooklyn.

Allegation F – Abuse of Authority: Sergeant Raymond Tomins entered and searched § 87(2)(b) in Brooklyn.

It is undisputed that officers arrived outside of § 87(2)(b) § 87(2)(b) in Brooklyn on February 27, 2017, at approximately 9:00 a.m. It is undisputed that the sole reason the officers arrived was because Det. Napolitano (Board Review 04) indicated that the subject of a New York State parole warrant, § 87(2)(b) resided at this address. It is undisputed that solely Det. Napolitano investigated the warrant and that solely he indicated that § 87(2)(b) resided at § 87(2)(b).

Since 2001, § 87(2)(b) has resided at § 87(2)(b) § 87(2)(b) in Brooklyn (Board Review 25). § 87(2)(b) (Board Review 05) testified that he knew § 87(2)(b) but that § 87(2)(b) § 87(2)(b) has never been inside of his apartment and that § 87(2)(b) § 87(2)(b) has never resided at § 87(2)(b) § 87(2)(b) testified that § 87(2)(b) § 87(2)(b) has never received

mail at § 87(2)(b) nor was he aware of § 87(2)(b) ever using § 87(2)(b)'s address for any other reason.

Det. Napolitano testified that his investigation of § 87(2)(b)'s parole warrant led him to conclude that § 87(2)(b) resided at § 87(2)(b). Det. Napolitano testified that the parole warrant may have listed an address for § 87(2)(b) but he did not recall. The investigation revealed that the parole warrant did list an address for § 87(2)(b) § 87(2)(b) (Board Review 06). It did not list any other address.

Det. Napolitano testified that his investigation of the parole warrant included solely the following steps: a search of four databases (GLO, iii, Real Time Crime, and ADW); a review of previous arrest reports; a review of two other active warrants for § 87(2)(b) (one bench warrant and one arrest warrant); and perhaps calling § 87(2)(b) parole officer, although Det. Napolitano did not recall calling the parole officer. Det. Napolitano testified that all of his investigative steps were documented in ADW. Det. Napolitano's documented investigative steps (Board Review 07) indicate that he solely searched ADW, iii, and Real Time Crime, and that those searches revealed two open warrants and 17 previous arrests for § 87(2)(b). The documented investigative steps do not list a search of GLO, nor do they indicate that § 87(2)(b) parole officer was called.

A bench warrant issued on February 6, 2017, for burglary in the second degree listed § 87(2)(b) address as § 87(2)(b) but it did not include an apartment number (Board Review 08). An arrest warrant issued on June 2, 2016, for unlawful possession of marijuana listed § 87(2)(b) address as § 87(2)(b) § 87(2)(b) (Board Review 09).

On June 29, 2017, the undersigned investigator reviewed § 87(2)(b)'s arrest history, and it revealed a § 87(2)(b) (Board Review 10). Of the two arrest reports from 2016, neither listed § 87(2)(b) as § 87(2)(b) address (Board Review 11). Both arrest reports from 2016 listed § 87(2)(b) as § 87(2)(b) address—one listed no apartment number and the other listed § 87(2)(b). The third arrest report, from 2017, is sealed, and the investigation was unable to access the address listed for § 87(2)(b) on this arrest report. Of all § 87(2)(b) arrests which were not sealed, none of them listed § 87(2)(b) as § 87(2)(b) address.

A March 10, 2017 DAS Snapshot of § 87(2)(b) revealed that his last known address was § 87(2)(b) in Brooklyn (Board Review 12). On June 30, 2017, a complete search of § 87(2)(b)'s history of addresses on DAS Snapshot indicated that in all of § 87(2)(b)'s history, § 87(2)(b) had solely been used one time, in June of 2016 (Board Review 26).

A March 7, 2017 search of the LexisNexis database for § 87(2)(b) indicated that his last known address was on Greene Avenue in Brooklyn, and it does not list § 87(2)(b) anywhere on the report (Board Review 13).

A June 29, 2017 search of the LexisNexis database for § 87(2)(b) § 87(2)(b) indicated that § 87(2)(b) is a current resident of § 87(2)(b) (Board Review 14). § 87(2)(b) is not listed as a current or former resident of § 87(2)(b).

It is undisputed that Det. Napolitano knocked on the door of § 87(2)(b) and that solely § 87(2)(b) was inside the apartment. It is undisputed that aside from Det. Napolitano's prior investigation that concluded that § 87(2)(b) resided at the location, there was no indication that § 87(2)(b) was inside the apartment when Det. Napolitano knocked. § 87(2)(b) testified that after waking up, he called out asking who it was. § 87(2)(b) said that officers told him that they were warrant squad officers and they had a warrant for the apartment. Det. Napolitano corroborated that he announced that he was a police

officer and that he had a warrant for the location, but denied that § 87(2)(b) ever said anything prior to opening the door. § 87(2)(b) testified that he then told the officers he would open the door, but he first had to get dressed.

Det. Napolitano testified that after knocking on the door and announcing his presence, he heard footsteps inside the apartment. Det. Napolitano testified that he heard footsteps come to the door of the apartment and turn around, as well as doors opening and closing inside the apartment. No other officer interviewed testified that they heard footsteps or any noise from inside the apartment, but there was corroboration that Det. Napolitano reported to his partners during the incident that he heard footsteps inside the apartment.

Det. Napolitano testified that he knocked on the neighboring apartment doors, but there was no answer at any of them. No other officer testified that this occurred.

With the exception of PO Ross, each officer interviewed testified that Det. Meza put over a radio communication regarding an individual at the bathroom window of § 87(2)(b). The testimonies ranged from an officer reporting that Det. Meza said someone was trying to escape from the bathroom window to solely an individual was looking outside the bathroom window. Each officer interviewed testified that there was no follow-up radio communication from Det. Meza or any other officer regarding Det. Meza's observation, or that they did not remember any follow up communications. Each officer interviewed either testified that they did not recall whether Det. Meza indicated that the person at the window looked like § 87(2)(b) or that Det. Meza never did and that no one ever asked. PO Ross (Board Review 15) testified that he did not recall any officer putting over a radio communication about someone at the window of § 87(2)(b).

Of the four officers who were positioned outside, solely Det. Meza testified that he saw someone at the window of § 87(2)(b). Det. Meza (Board Review 16) testified that he saw a light-skinned male open a window, peek his head out, and then go back in—Det. Meza testified that he solely communicated this information over the radio, as far as he could remember.

Along with Det. Meza, Det. Giretti (Board Review 20), PO Ross, and Det. Viar (Board Review 21) were each outside covering the fire escapes and windows of § 87(2)(b). Solely Det. Meza testified that he saw anyone go to a window of § 87(2)(b).

§ 87(2)(b) is a light-skinned Hispanic male who is § 87(2)(b) old. § 87(2)(b) is a § 87(2)(b) black male who is § 87(2)(b) old. Photographs of § 87(2)(b) and § 87(2)(b) demonstrate significant differences in their physical appearances (Board Review 17).

It is undisputed that § 87(2)(b) eventually opened the front door of § 87(2)(b). § 87(2)(b) alleged that Det. Napolitano, Sgt. Tomins (Board Review 18), Det. Russo (Board Review 19), and Det. Ortiz (Board Review 24) were each pointing a gun at him. Det. Napolitano acknowledged pointing a gun at § 87(2)(b) as he opened the door, but no other officer acknowledged pointing a gun at § 87(2)(b) or seeing any officer aside from Det. Napolitano do so. Det. Napolitano testified that he pointed his gun at the door in the event that whoever opened the door might have a weapon, and that he temporarily had it pointed at § 87(2)(b). Det. Napolitano testified that as soon as he realized § 87(2)(b) was not a threat, he holstered his weapon. Each officer testified that as soon as § 87(2)(b) opened the apartment door, they were able to tell he was not § 87(2)(b).

It is undisputed that § 87(2)(b) was immediately escorted out of his apartment, and that Det. Napolitano, Sgt. Tomins, and other officers entered and searched the apartment. Det. Napolitano stated that he had reasonable suspicion that § 87(2)(b) was inside the apartment based on his investigation of the parole warrant, based on his hearing footsteps inside the

apartment but no verbal response, based on the radio communication from Det. Meza, and finally, based on the fact that no neighbors answered his knocks. § 87(2)(g)

It is undisputed that there were negative results for § 87(2)(b) or any person inside of § 87(2)(b).

It is undisputed that after the search of § 87(2)(b) yielded negative results, Det. Napolitano told § 87(2)(b) that they were looking for § 87(2)(b) and that § 87(2)(b) told them that § 87(2)(b) might be in § 87(2)(b). It is undisputed that § 87(2)(b) was then apprehended inside of § 87(2)(b). Several officers testified that Det. Meza put over point-to-point radio that he saw an individual at the window of § 87(2)(b) prior to the officers gaining entry inside § 87(2)(b) although Det. Meza himself did not recall this. Det. Napolitano's documented investigative steps indicate that Det. Meza put over a radio communication about an individual at the window of § 87(2)(b) before entry, and that Det. Meza put over a radio communication about an individual at the window of § 87(2)(b) before entry into § 87(2)(b).

To justifiably point his gun, an officer must possess an articulable belief that the potential for serious physical injury is present. NYPD Patrol Guide, Section 221-01. (Board Review 22). A parole or arrest warrant carries with it the limited authority to enter a dwelling in which the suspect lives and where the officer has a reasonable belief that the suspect is within. People v. Paige, 77 A.D.3d 1193 (2010). (Board Review 23). Forcible entry into a third party residence requires a search warrant. N.Y. Crim. Proc. Law, Section 120.80 (Board Review 27).

§ 87(2)(b), § 87(2)(g)

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Allegation G – Force: An officer used physical force against § 87(2)(b)

As discussed in the ‘Explanation of Subject Officer Identification’ section, the investigation was unable to determine who, if anyone, used physical force against § 87(2)(b).

§ 87(2)(g) [Redacted].

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date